



LIUNA!

August 15, 2022

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U.S. Department of Labor
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200 Constitution Avenue, NW
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WHDPRAComments@dol.gov

Re: Comments on proposed revision to "Report of Construction Contractor's Wage Rates", Control Number 1235-0015

Dear Ms. DeBisschop:

The Laborers' International Union of North America (LIUNA) submits the attached comments to the U.S. Department of Labor in response to the Comment Request; "Report of Construction Contractor's Wage Rates".

Your time and attention to the attached are appreciated. Should you have any questions, please contact this office.

With kind regards, I am

Sincerely yours,

TERRY O'SULLIVAN
General President

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Attachment

Feel the Power

**COMMENTS OF THE LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA ON THE INFORMATION COLLECTION REQUEST FOR "REPORT OF
CONSTRUCTION CONTRACTOR'S WAGE RATES"
Wage and Hour Division, U.S. Department of Labor
Control Number 1235-0015**

August 15, 2022

The Laborers' International Union of North America (LIUNA) submits these comments on the Information Collection Request (ICR) regarding proposed changes to the "Report of Construction Contractor's Wage Rates" (WD-10 Form). 87 Federal Register 36152 (June 15, 2022). The WD-10 Form is used to collect project wage data in surveys to implement the prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA).

The Davis-Bacon Act (DBA) regulations direct the Administrator of the Wage and Hour Division (WHD), US Department of Labor (DOL), to conduct a program for obtaining and compiling wage rate information to determine locally prevailing wages under the DBRA. 29 CFR 1.3. The WD-10 Form is a linchpin of the wage survey process and must not create barriers to the Administrator fully carrying out her duties to ascertain and publish the prevailing wage rate for "classes of laborers and mechanics." The ICR correctly states that "the WD-10 form is a primary source of information and *is essential to the determination of prevailing wages.*" 87 FR 36153 (emphasis added).

WHD is now proposing changes to the WD-10 Form that have as their purpose allowing "respondents to quickly gather and report information necessary for the Wage and Hour Division to properly determine and publish prevailing wage rates...[and] to increase the ease of participating in a survey and solicit more usable wage data to issue more comprehensive wage determinations." WHD has asked for specific comments on whether the proposed changes "enhance the quality, utility, and clarity of the information" to be collected. 87 FR 36153.

LIUNA strongly supports the effort of WHD in making reforms to the form WD-10. Proposed changes in survey process and guidance will greatly improve the quality of survey data and facilitate widespread participation. In addition, LIUNA is submitting detailed comments regarding the proposed *Laborer-1600 Series* including recommendations on modifying it to ensure that it meets its "essential" role in "*the determination of prevailing wages.*" 87 FR 36153.

I. COMMENTS ON CHANGES AND GUIDANCE IN THE ICR

The proposed WD-10 form will no longer ask respondents to determine a peak week(s) of construction for reported projects, identify the project value, require identification of contractors or subcontractors on the project, or state the applicability of state prevailing wage laws.

Peak week

We support eliminating the required “peak week” reporting in favor of reporting the total number of workers employed in each classification on each project. This change will have several benefits to survey participants, including ease of participation, clarity, and the availability of more data to report. Because retroactive calculation of a peak week is difficult, and contractors do not keep records designed for this purpose, the total “number of workers at this wage” approach is a logical and efficient improvement to the process.

Identifying prime contractor

We support the position of NABTU in their response to its ICR filing that contractors should be identified “if known.” The availability of such information should not limit the wage data available for submission.

Project value

We support simply establishing the \$2,000 threshold question for a project as accurate project values are rarely known by survey respondents.

Removal of the question regarding a project being subject to a state prevailing wage law

This information has been of marginal use in assisting in the process of collecting and analyzing data to establish a prevailing wage. The information can be ascertained after the fact if it is needed, but this knowledge may not be readily accessible to survey participants during surveys and therefore adds an unnecessary obstacle to the acquisition of usable data. We agree with the proposal to remove this question from the survey form.

II. COMMENTS ON THE CLASSIFICATION DIRECTORY

A. LIUNA Urges That The 1600 Series In The Proposed Classification And Subclassification Directory Be Expanded To Allow A Full Submission Of Laborers’ Wage Rate Data

The ICR proposes that wage data for “classes of laborers and mechanics” will be gathered according to a new *Classification and Subclassification Directory* (“*Directory*”).¹ The proposed *Directory* contains lists of classifications (referred to in the ICR as a “picklist”) which must be selected from a drop-down menu for submission of wage data during surveys. The proposed *Directory* allows submitters no options for submission of classification data other than those

¹ See proposed *WD-10 Davis Bacon Wage Survey Report of Construction Contractor’s Wage Rates* in the supplementary information at <https://www.dol.gov/sites/dolgov/files/WHD/davis-bacon/wd10/WD-10.pdf>. 87 FR 36153.

listed in the *Directory*. The only open-ended option for submission of data is the “*Other*” category in *Series 5000*, which is, however not associated with a particular craft.

The proposed new form will substitute for the current collection form in which each submitter lists the classifications and subclassifications it determines have performed the work on projects for which data is being submitted.

The proposed *1600 Series* for *Laborer* classifications contains five (5) subclassifications. They are:

1600. Laborer

- 1601. General
- 1602. Landscape Laborer
- 1603. Pipelayer
- 1604. Mason Tender
- 1605. Plaster Tender

LIUNA supports the proposed listings for *Laborer* in the *1600 Series* because these five subclassifications are widely recognized and represent a substantial amount of the work performed by laborers nationwide. We additionally propose minor modifications to the *Series 1600* as proposed below. With these modifications, the new WD-10 will allow future surveys to be based on project data that reflects the full scope of locally prevailing practices of laborer classifications in localities around the country. These modifications will allow the ICR “picklist” menu to meet its goal to “enhance the quality, utility, and clarity” of the data and to “solicit more usable wage data to... allow the Division to properly determine ... prevailing wage rates.” 87 FR 36153.

Specifically, we propose **adding an “*Other subclassification*” category under the *1600 Series*** to allow for submission of locally prevalent laborer subclassifications where they are not captured by the proposed list. In addition, we suggest relocating *Traffic Control/Flagger* under the *1600 Series*, rather than listing it separately as *Series 2701 and 2702*, to more accurately represent the craft responsible for this work nationwide.

1. Adding an “other” category to the *1600 Series*

Construction Laborers have one of the highest concentrations of employment of any craft in sectors dominated by civil and other publicly funded projects.² Given the size of the construction Laborers’ workforce, it is not surprising that locally prevailing practices over time have evolved to produce a wide array of groups and subclassifications. There are a variety of data sources which reflect this diversity in the subclassifications and major groupings within the

² Construction Laborers comprise 24.67% of *Other Heavy and Civil Engineering Construction* and 23.68% of *Highway, Street, and Bridge Construction*. <https://www.bls.gov/oes/current/oes472061.htm>

Laborers craft. Common subclassifications or groups of Laborers not found on the proposed picklist can be found in the current WHD Craft ID system and hundreds of Davis-Bacon wage determinations issued for Laborers' classifications currently based on those Craft ID codes;³ classifications of laborers used in state prevailing wage laws;⁴ and curricula used in Laborers' registered apprenticeship plans which show the scope of work for which laborers are trained.⁵

To facilitate accurate participation in the survey, we therefore recommend the *1600 Series* allow for wage data to be submitted for work not represented by the five subclassifications on the proposed picklist. Without such a modification, the project data for certain laborers subclassifications now reflected in hundreds of current wage determinations will not be able to be accurately reported.

Because the proposed *Other* classification category (5000 series) exists outside of the *Laborer 1600 Series*, or any of the established craft classifications, it will inevitably lead to confusion and an underreporting of Laborers' prevailing practice wage data by survey participants, thereby preventing WHD from obtaining full and accurate data leading to issuance of correct prevailing wages for laborers.

Including an *Other subclassification* option in the *1600 Series* will allow major categories, common to laborer subclassifications such as Demolition, Hazmat Remediation/Asbestos Abatement/ Environmental Remediation, Miner/Tunnel, Driller/Blaster, and Guardrail Erecting,

³ Under the current system, each classification along with subclassifications of that classification have a numerical code referred to as a "Craft ID" number. When WHD is processing the submissions it receives in response to a survey, the data is entered onto a WD- 22a form for each project and then further aggregated by classification using a Craft ID code identifier on the WD-22 Form for each county which is being surveyed. The craft ID numbers are publicly available from the WD-22 and WD-22a forms.

⁴ See e.g. Alaska https://labor.alaska.gov/lss/forms/Pamphlet_600_Issue_44.pdf, p. 6-12 and p. 23-26; California <https://www.dir.ca.gov/OPRL/2022-1/PWD/Determinations/Northern/NC-023-102-1.pdf>, pp. 1-7; Connecticut <https://www.ctdol.state.ct.us/Wgwkstnd/prevailing-rates/Occupational%20Bulletin.pdf>, pp. 3-4; Delaware <https://laborfiles.delaware.gov/main/dia/olle/Prevailing%20Wage%20Classification%20of%20Workers.pdf>, pp. 11-13; Maryland <https://www.dllr.state.md.us/forms/prevwagereqwagedet.pdf>, pp. 1-2; New Jersey <https://lwdwebpt.dol.state.nj.us/archivewages/186095911-statewide-7-5-22.pdf>, pp. 29-36; New Mexico https://www.dws.state.nm.us/Portals/0/DM/LaborRelations/Public_Works_Minimum_Wage_Act_1_1_2019.pdf?v=2021-08-26-094848-013, p. 20-23; Oregon https://www.oregon.gov/boli/employers/Documents/OccupationalDefinitions_070118.pdf pp. 14-18; Pennsylvania <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/prevailing-wage/Documents/Notes%20for%2033%20County%20Heavy%20and%20Highway%20Laborers.pdf> pp.1-3; Tennessee https://www.tn.gov/content/dam/tn/workforce/documents/pwc/Prevailing_Wage_Rules.pdf pp.8-9; 10; Washington <https://secure.lni.wa.gov/wagelookup/>; and Wyoming https://www.dot.state.wy.us/files/live/sites/wydot/files/shared/Civil_Rights_Coordinator/State%20Building%20%26%20Special%20Trades%20-%20Published%20March%2031%20%202022%20%20Legal%20No%2079686.pdf p. 2.

⁵ The LIUNA Training catalog offers over 25 programs featuring more than 100 courses that focus on six areas of concentration: Commercial Construction, Residential Construction, Environmental, Utilities, Safety & Health, and Leadership. For a representative listing see: <https://www.liunatraining.org/programs-and-services/>

to be reported when it is a locally prevailing practice for these subclassifications to be compensated at rates other than those represented under any of the pre-listed subclassifications.

2. Move “Traffic Control/Flagger” to 1600 Series

Series 2701-2702 (*Traffic control – Flagger*) is a core laborers’ classification as demonstrated by the federal Wage Determinations in numerous states where laborer rates prevail for such traffic control and/or “flagger” duties.⁶ The *Traffic control – Flagger* group is not only recognized within the scope of the Laborers’ classification in hundreds of current Davis-Bacon wage determinations but also under many state prevailing wage laws.

In addition, LIUNA fully addressed the work and scope of *Traffic Control/Flagger* in its public comments responding to the DOL’s recent NPRM on “Updating the Davis-Bacon and Related Acts” (see, *LIUNA comment* pp. 52-54). 87 FR 15698. As noted there, as part of Heavy Civil and Highway Training for Laborers, many LIUNA Training Programs included multiple traffic control and flagging courses.⁷

This widespread and longstanding practice of Traffic Control/Flagger duties being performed by laborers across the country argues for the inclusion of such work under the *Series 1600 Laborer*.

B. Needed Clarification Of Duplicative Or Overlapping Subclassifications In The Directory But Not In Series 1600

There are many subclassifications on the picklist other than in *Series 1600 Laborer* that are simply imprecise and require clarifying terms or descriptions. There are, additionally, terms similar or identical in name to work performed by laborers in many areas or under certain circumstances but which are found listed under another Series. A mechanism must be included in the WD-10 to allow varying local practices to be reported when, for example, certain tools are used by more than one craft in a locality but only under *specified circumstances* particular to area practice. There must likewise be instructions allowing for reporting of wage data for work classified in the Directory under one Series, but which in a given area is typically the work of another classification/subclassification Series listed in the Directory. Finally, the duties of laborers, especially those of General Laborers and Mason Tenders, frequently encompass items currently listed elsewhere in the Directory. Understanding the scope of these major subclassifications will be vital for Wage and Hour to avoid generating wage determinations that conflict with its standing mandate to identify prevailing practice for each type of work.

⁶ See e.g. WDs AK20220001; CA20220017; CT20220001; DC20220001; HI20220001; IN20220006; KY20220039; MA20220001; MO20220001; NJ20220002; NV20220001; OH20220001; OR20220001; RI20220001; UT20220097; WA20210070; WI20220010; WV20220069.

⁷ E.g. <https://www.nwlett.edu/courses/heavy-civil-highway-laborers-training/traffic-control/>

1. Work conditionally performed pursuant to more than one wage practice in a given locality

There are a number of subclassifications in the *Directory* that are not included in the *Series 1600 Laborer* but which exhibit significant overlap with work performed under a *Series 1600* subclassification. Clarification in these cases will be absolutely necessary to provide certainty to the contracting community which relies upon wage determinations to bid work, as well as to the Wage and Hour Administrator who must properly analyze survey data to create such wage determinations, and the DOL enforcement team which audits compliance using these wage determinations. We seek clarification on how such varied tasks and duties will be treated for purposes of ascertaining a prevailing wage.

In the complicated world of construction, general terms can sometimes be insufficient for capturing the local area practice for particular scopes of work. One so-called “type of work” might occasionally, given the idiosyncrasies of certain projects or the intricate nature of the task, be performed by different workers at different rates. The Department should recognize the need for precision in some cases where these conditional situations exist.

In each of the examples noted below the work is often categorized in the existing Davis-Bacon Craft ID system under the Laborers’ classification and in wage determinations based upon that categorization.

One example is: *102. Asbestos worker*. Removal of asbestos is commonly performed by craft workers who are *laborers*, but in other circumstance is performed by *insulators*—often in the same locality. The type of structure, nature of the removal, or other conditions generally dictate the classification of worker (and associated wage) conducting the remediation. The WD-10 form must allow for these specifications in capturing the relevant wage data in such a locality where these conditions apply.

A similar challenge is represented by the extensive Power Equipment Operator list. Many items in *Series 4000. Power Equipment Operator* are items used by laborers *under specific circumstances*. The size or model of a tool, the specific type of project for which a task is being performed, or other conditional considerations of the area dictate the craft and wage commonly paid in the local area for the type of work. Because of the established local practice on tool operation, laborers many times operate tools as part of the duty of the General Laborer and therefore contractors do not track wage data for such work independently of the General Laborer. **The Department should therefore strictly limit the Series 4000 to detailed descriptions of the piece of equipment to which each refers and should not include hand held tools in this section.**

Great care should be used on the Form WD-10 in designating pieces of equipment (rather than scopes of work). The following discussion notes the Directory item # and in parentheses the

existing WHD Davis-Bacon survey Craft ID number corresponding to laborer subclassifications in this category. Examples in which the WD-10 requires greater clarity or precision are:

Seat v. walk-behind. Typically, equipment with a seat are operated by a craft other than laborers and paid at a different wage rate. Handheld and walk-behind equipment is typically operated by laborers (*Series 1600*). That clarification of tool type versus riding equipment should be incorporated in the instructions or *Directory* listing on several pieces of equipment, specifically:

4012. *Chipper* (Cf. Craft ID: 12756)

4013. *Compactor* (Cf. Craft ID: 11422, 11423, 12482)

4015. *Tamper/Spreader/Finisher* (Cf. Craft ID: 1043, 12582)

4032. *Roller* (Cf. Craft ID: 12648, 12781)

4035. *Screed* (Cf. Craft ID: 416)

4036. *Tamper* (Cf. Craft ID: 1043, 12582)

4038. *Trencher* (Cf. Craft ID: 1045)

Size. Some equipment listed in the Series 4000 is also the work of laborers (*Series 1600*) in many areas pursuant to the size or make of the tool described. That distinction must be made (or available to be added) in the *Directory*.

4019. *Drill* (Cf. Craft ID: 973, 990, 12148, 12472, 12507, 12664)

4031. *Pump* –Pumps come in various sizes and those sizes typically determine the craft operating it and the corresponding wage rate. Operating engineers typically operate the larger pumps and laborers operate smaller pumps, but area practice dictates the wage.

Situational tool of the trade. The following equipment is operated by laborers in many areas according to specifically defined circumstances under area practice. The pieces of equipment below represent tools of the trade for general laborers (1601) and for mason tenders (1602) where used in tending the masonry crafts. This distinction is important to clarify for both the contractor and enforcement community.

4007. *Bobcat/Skid Steer/Skid Loader* – Oftentimes the use of a bobcat or skidsteer is intermittent, due to the type of work being performed, for example demolition. When demolition is taking place the bobcat/skidsteer may not be running until it is time to move debris away from the work area. Oftentimes these pieces are also used to haul material around the jobsite, which is also the work of the general laborer (*Series 1601*). (Cf. Craft ID: 30573)

4020. *Forklift* – This is a similar situation to the *bobcat/skidsteer*. Typically forklifts are used intermittently, and 1602. *Mason Tenders* would operate forklifts when moving materials while tending the mason crafts.

4024. *Lull* – This is a similar situation to *bobcat/skidsteer* and *forklift*. This is a tool of the trade, typically used by Mason Tenders (Series 1602) to move materials.

Clarify terms designating equipment versus scope of work. Some terms simply require clarification to designate a wage for a piece of equipment rather than vague terms that could refer to broad scopes of work on a site. Examples are:

4002. *Asphalt/Concrete Laydown*

4014. *Concrete*

Another item requiring clarification is:

1802. *Sign & Display Erecting* – If this is in reference to traffic signs and display (temporary signals), laborers perform this work in most areas. If this is indeed traffic signs/displays/signals, it would fall under *Traffic Control*, which itself should fall under *Series 1600 Laborer* as noted above. If it does not include traffic signs, that clarification should be made due to existing laborers wage determinations for sign erecting.⁸

2. Overlapping duties of the *General Laborer*

An additional challenge derives from the broad nature of the work of the General Laborer as noted above. The duties of a General Laborer may vary from one locality to the next, but they tend to encompass activities with significant similarity to a number of those subclassifications listed in the *Directory*. This creates a challenge to reporting and prevailing the work of such a craft if every duty must be exhaustively itemized – a contradiction to the very nature of the craft.

For example, all manner of concrete work – sometimes even described as “Concrete Worker” in agreements or state prevailing wage classifications⁹ – is commonly part of the General Laborer’s

⁸ For example of laborer “sign erector” wage determinations, see e.g.: HI20220001.

⁹ Variations of “concrete worker” or “Concrete laborer” can be found in the DB wage determinations of numerous states. (See e.g.: AK20220001; CT20220001; DC20220001; KY20220072; OH20220001; OR20220001; CA20220018; WV20220069). For state prevailing wage laws that describe concrete work as part of the laborers’ scope of duties, see e.g. Connecticut <https://www.ctdol.state.ct.us/Wgwkstnd/prevailing-rates/Occupational%20Bulletin.pdf>; Delaware <https://laborfiles.delaware.gov/main/dia/olle/Prevailing%20Wage%20Classification%20of%20Workers.pdf>; Maryland <https://www.dllr.state.md.us/forms/prevwagereqwagedet.pdf>; Montana <https://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/building-construction-occupations>; Nevada [https://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/1%20CLARK%202022\(1\).pdf](https://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/1%20CLARK%202022(1).pdf); New

duties (and wage rate), yet “Concrete” appears under other classifications including the vague “Concrete” in Series 4000 Power Equipment Operator (discussed above) and also the *Series 501. Carpenter* list: *504. Formwork Concrete*.

Typically, carpenters build concrete forms and General Laborers do all other formwork including oiling the forms, stripping them off the concrete after a pour, cleaning the forms and then re-oiling them and moving them to the next location. However, it is also the practice in many areas for laborers to work as “form setters” for various concrete structures.¹⁰ These overlaps in duties may result in confusion for participants in wage surveys and will certainly require clarification in establishing the local wage practices on this type of work. We therefore recommend clear instructions for handling such overlapping duties in a locality when entering wage data for DB surveys.

General Laborers commonly perform the work currently listed under *1803. Pavement Marking* – Pavement marking is also called striping. This is something that is done after new asphalt is laid down. Striping is the process of putting the lines and markings on the pavement. This is generally performed by laborers, often as part of the General Laborer duties, and in some places LIUNA has separate agreements covering this work. Again, clarification should be made about how to submit wage data under the *1600 Series* for this type of work, especially if such duties are already part of the *1601. General Laborer* on building or highway work.

Finally, some care should be given to the wage collection and wage determination for several truck driver classifications. It is somewhat common for laborers to operate vehicles on site (to haul materials or refuse, for instance) for short periods based on area practice. This includes *3005. Flatbed*, and *3009. Pickup*. Wage determinations should clarify any such practice to prevent confusion on the job site over wages or DB compliance.

3. Clarification for work performed by more than one craft in *different* localities

Similar, although more straightforward, guidance is required for other types of work commonly performed by different crafts in different areas. In these cases, the work does not change or overlap—the wage or conditions may not vary *within* a specific locality—but the craft performing the work may vary from one locality to another. Examples of this include:

Mexico https://www.dws.state.nm.us/Portals/0/DM/LaborRelations/Public_Works_Minimum_Wage_Act_1_1_2019.pdf?ver=2021-08-26-094848-013;

Oregon https://www.oregon.gov/boli/employers/Documents/OccupationalDefinitions_070118.pdf;

Pennsylvania <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/lmc/prevailing-wage/Documents/Notes%20for%2033%20County%20Heavy%20and%20Highway%20Laborers.pdf>; Washington <https://secure.lni.wa.gov/wagelookup/>.

¹⁰ See e.g. wage determinations DC20220001; NJ20220002; KY20220038; OH20220001; PA20220003; MI20220001; WI20220015.

202. *Fire stop technician* – Laborers often perform firestop installation in different parts of the country. The Insulator craft may perform this work in other areas.

Similarly, laborers operate 3006. *Hydroseeders* and 3012. *Water Trucks* in some parts of the country. Where laborers perform the work, wage surveys could clarify that the *Series 1600 Laborer* can or should report such work using the proposed “*Other subclassification*” option available for unlisted laborers’ wage classifications.

We believe the above changes to the Directory and corresponding instructions will help achieve the ICR’s goal of greater “quality, utility and clarity” in the data collection process.